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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 06-0790 C

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

NEW VENTURES ASSOCIATES, LLC,

Defendant.

JOINT MOTION BY THE PARTIES TO AMEND PRELIMINARY INJUNCTION

Pursuant to Mass. R. Civ. P. 65 and the terms of paragraph twenty (20) of the Preliminary Injunction ordered by the Court in this action on October 20, 2006, the Commonwealth of Massachusetts (the “Commonwealth”) and defendant New Ventures Associates, LLC (“New Ventures”) hereby jointly move that this Court add a new paragraph twenty-three (23) and amend paragraph three (3) of said Preliminary Injunction in the form attached hereto.

In support of this joint motion, the parties state that the Commonwealth filed a Complaint in this action alleging that New Ventures, in the course of closing an uncapped, unlined, inactive landfill in Newburyport (the “Facility”), violated the Solid Waste Management Act G.L. c. 111, § 150A, the Massachusetts Clean Air Act, G.L. c.111, §§ 142 A-O, and the regulations promulgated pursuant to these statutes, as well as enforcement orders issued by the Massachusetts Department of Environmental Protection (the “Department”).

This Court's October 20, 2006 Preliminary Injunction (the "Order") requires, *inter alia*, that New Ventures install and operate air pollution control equipment at the Facility and completely close and cap the landfill by certain deadlines. Since the Order was entered, however, the construction schedule for capping has been affected by concerns over weather and the immediate use of certain material to shape and grade a limited portion of the landfill before the final capping process may begin. For this reason, the parties hereby jointly move that paragraph 3 of the Order be amended to allow additional truckloads of shaping and grading material to be accepted and placed at the landfill for the sole and limited purpose of expediting the final capping of two landfill areas before winter weather conditions may prevent completion of this construction activity. This proposed amendment strikes the second sentence of paragraph three (3) and replaces it with the following new sentence:

Notwithstanding the 14 truckload limit of the previous sentence, once the Department has determined in writing that New Ventures has complied with the terms and conditions of this paragraph 3, New Ventures may begin accepting no more than a total of thirty-five (35) truckloads per day, inclusive of any truckloads accepted in accordance with the previous sentence, of fine and very fine C&D Material meeting the gypsum separation and other requirements in the protocol attached to this Order as "Appendix D," processed by Wood Waste within 8 weeks prior to the date of this Order, for the sole and limited purpose of placement, with out being mixed with soil in a one-to-one (1:1) ratio, as a sub-base layer directly beneath the Geocomposite gas vent layer in the Phase I and

Phase II areas, subject to the final grades depicted in the revised corrective action design plan, referenced in paragraph 1 (w) of this Order.

Thus the amended Paragraph three (3) of the Order would read in its entirety:

3. Once the Department with reasonable promptness determines in writing that New Ventures has fully complied with all of the terms and conditions in paragraphs 1 (a) [contract for enclosed flare], 1 (c) [contract for and operation of final pretreatment system], 1 (e) [overnight pretreatment pending 24/7 pretreatment], 1 (f) [pretreatment vessels], 1 (g) [proof of purchase of Sulfa-Bind pretreatment media], 1 (i) [proper pretreatment media disposal], 1 (j) [tarp placement], 1 (k) [\$200K in escrow], 1 (l) [landfill staff], 1 (q) [FML contract], 1 (t) [Phase I gas collection system trench construction begun], and 1 (y) [BMP compliance monitoring contract] of this Order, New Ventures may begin accepting no more than 14 truckloads per day of C&D Materials at the Site for placement within the Phase I area as final grading and shaping material from C&D Waste received and processed by Wood Waste after the date of this Order and subject to the BMPs required by Appendix C. Notwithstanding the 14 truckload limit of the previous sentence, once the Department has determined in writing that New Ventures has complied with the terms and conditions of this paragraph 3, New Ventures may begin accepting no more than a total of thirty-five (35) truckloads per day, inclusive of any truckloads accepted in accordance with the previous sentence, of fine and very fine C&D Material meeting the gypsum separation and other requirements in the protocol attached to this Order as “Appendix D,” processed by Wood Waste within 8 weeks prior to the date of this Order, for the sole and limited purpose of placement, with out being mixed with soil in a

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one-to-one (1:1) ratio, as a sub-base layer directly beneath the Geocomposite gas vent layer in the Phase I and Phase II areas, subject to the final grades depicted in the revised corrective action design plan, referenced in paragraph 1 (w) of this Order.

Because numerous requirements of the Order must be completed within a specified number of days of the date of the Order, the parties also jointly move that the following new paragraph, paragraph twenty-three (23), be added at the end of the Order:

23. For the purpose of this Order, including, without limitation, all requirements that must be complied with or completed within a specified number of days from the date of this Order, the date of this Order shall be October 20, 2006, the date the initial Order, without amendment, was entered.

The proposed new Order in its entirety, including the new paragraph twenty-three (23), above, and amended paragraph three (3), above, replacing the original paragraph three (3), is attached as "Exhibit A." The parties hereby move that this Court allow this joint motion to amend the Order in the form attached as Exhibit A.

The Commonwealth and New Ventures state that allowance of this joint motion is in the public interest that this Court allow because it will help assure that portions of the landfill are

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capped before winter weather stops closure work, thus promoting compliance with solid waste laws designed to promote and protect public health, safety and the environment.

WHEREFORE, the parties respectfully request that this Court allow this joint motion and add a new paragraph twenty-three (23) and amend paragraph three (3) of the Order in the form attached as Exhibit A.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS NEW VENTURES ASSOCIATES LLC

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Dated: November 1, 2006

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